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Supreme Court, U.S.
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No. 97-702

In The

Supreme Court of the United States

October Term, 1997

SEACOR MARINE, INC.,

Petitioner,

versus

CHEVRON U.S.A. INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Petitioner herein seeks discretionary review by this Court of the decision of the United States Court of Appeals, Fifth Circuit, reversing the district court's denial of the Motion for Summary Judgment filed by respondent. The Fifth Circuit reversed the district court and held that petitioner, Seacor Marine, Inc. ("Seacor"), owes contractual indemnity to respondent, Chevron U.S.A. Inc. ("Chevron"), pursuant to the terms of a vessel charter agreement. Respondent, Chevron, submits that for the reasons set forth herein, this Court should deny petitioner's writ application.

A Statement of Facts

On or about September 24, 1993, plaintiff, Raymond Gaspard, was employed by Nabors Drilling U.S.A., Inc. ("Nabors") as a roustabout. Nabors was performing drilling services on Chevron's Platform B in Main Pass, Block 299, which is located off the coast of Louisiana in the Gulf of Mexico.

Chevron had entered into a Blanket Time Charter with Seacor, which charter was in full force and effect on September 24, 1993. On that date, and pursuant to the charter, Seacor's vessel, the M/V LONG ISLAND, was used to transport cargo to the platform and was located next to the platform for off-loading of the cargo.

Mr. Gaspard was sent from the platform to the vessel in order to rig a sling from the main hoist of the crane, which was located on the platform, to the drill collars on the vessel for off-loading. The crane was owned and

operated by Nabors. While Mr. Gaspard was aboard the vessel, the auxiliary or fastline of the crane was somehow activated, pulling the line and headache ball assembly over the sheave, and parting the line. The headache ball fell onto the deck of the vessel, severing Mr. Gaspard's legs.

The Blanket Time Charter between Chevron and Seacor provided, in pertinent part:

> INDEMNITIES: Notwithstanding anything elsewhere contained in this charter, Owner [Seacor] hereby agrees to fully indemnify and hold Charterer [Chevron] and Charterer's co-venturers, co-operators and partners forever harmless, and to undertake to defend Charterer and Charterer's co-venturers, co-operators and partners, of and from any and all liabilities, losses, damages and costs, of whatsoever nature or kind, for personal injury or death, or for damage to the property of third parties, or for damage to Charterer's and Charterer's co-venturers, co-operators and partners' property, arising out of or in any way directly or indirectly connected with the performance of service under this agreement or the ownership, maintenance, management, operation, transportation of passengers, carrying of cargo, loading or unloading of cargo, loading or unloading of passengers or navigation of the vessel, and whether or not caused or contributed by the negligence, strict liability or fault of the Charterer or Charterer's co-venturers, co-operators and partners, or of any person or party for those acts Charterer and Charterer's co-venturers, co-operators and partners is or may be liable. Owner's liability under this section shall be limited to the greater of

$5,000,000.00 or the amount of insurance required to be carried pursuant to the terms and provisions of the blanket time charter.

B Procedural History

On December 16, 1993, Raymond Gaspard and his wife, Hazel Gaspard, filed this litigation against Offshore Crane and Equipment, Inc., a unit of Amclyde Engineering Products, Inc.; Unit Crane, Inc.; Amclyde Engineering Products, Inc.; Vickers, Inc.; Weatherford U.S., Inc.; Seacor and Chevron. The original and supplemental petitions asserted that Mr. Gaspard was injured while on the LONG ISLAND, the vessel owned by Seacor. The petitions also alleged that Chevron was liable to plaintiffs as the owner, operator and custodian of Platform B.

The case was subsequently removed to the United States District Court for the Eastern District of Louisiana. Chevron answered the plaintiffs' petitions, and filed a cross claim against Seacor and a third party demand against Anglo-American Insurance Company ("Anglo-American"). Chevron's cross claim sought contribution and indemnity, both tort and contractual, from Seacor, as well as costs and attorney's fees expended by Chevron in the defense of this claim. Additionally, Chevron asserted that Seacor was required to obtain insurance, naming Chevron as an additional insured to protect Chevron against claims such as those asserted by the Gaspards. The third party demand of Chevron against Anglo-American alleged that Chevron was covered as an additional assured for its alleged liability to Raymond Gaspard under an insurance policy issued by Anglo-American to Seacor.

Chevron filed a Motion for Partial Summary Judgment seeking indemnity and a defense to plaintiffs' allegations pursuant to the Blanket Time Charter in effect between Seacor and Chevron. By Order dated March 31, 1995, the district court denied this Motion for Summary Judgment, holding that Seacor did not owe indemnity to Chevron. A copy of the district court's Order and Reasons is contained in the Appendix of Seacor's Petition for Writ of Certiorari, marked Appendix A.

On April 20, 1995, the district court granted Seacor's Motion to Dismiss, which disposed of plaintiffs' claims against Seacor.

On January 11, 1996, Anglo-American filed a Motion for Summary Judgment, alleging that it did not owe a defense or indemnity to Chevron. By Order dated February 14, 1996, the district court granted Anglo-American's Motion for Summary Judgment, dismissing Chevron's third party demand.

In March 1996, plaintiffs settled their claims against all remaining defendants, including Chevron. Neither Seacor nor Anglo-American participated in that settlement. In that settlement, Chevron reserved its rights against Seacor and Anglo-American. Once settlement was reached, Chevron timely filed its Notice of Appeal, appealing both the district court's denial of Chevron's Motion for Partial Summary Judgment and the district court's granting of Anglo-American's Motion for Summary Judgment.

In a decision published at 106 F.3d 1232, the United States Court of Appeals for the Fifth Circuit reversed the district court. The Fifth Circuit held that the blanket time

charter required Seacor to indemnify Chevron, and remanded the case to the district court for a calculation of the amount of damages owed by Seacor to Chevron. The Fifth Circuit further held that a genuine issue of material fact existed as to whether Anglo-American's policy covered vessel-related liabilities involving Chevron's negligence in its capacity as platform owner, and remanded that issue for a determination by the district court of whether Chevron should prevail in its third party claim against Anglo-American.

Seacor now seeks a Writ of Certiorari from this Court for a review of the Fifth Circuit's holding that Seacor owes indemnity to Chevron.

REASONS FOR DENYING THE WRIT

In its Petition for Writ of Certiorari, Seacor alleges that "[t]he Fifth Circuit's opinion exemplifies recurring confusion among the courts, which have failed to consistently recognize that liability 'arises out of' an activity only if the acts or omissions giving rise to the liability occurred in the conduct of that activity. Review by this Court would clarify the meaning of this common term of indemnity contracts and would lend predictability to the interpretation of innumerable contracts in maritime industries and elsewhere." Seacor's Petition for Writ of Certiorari pages 4-5. Seacor's contentions, however, are without merit. Contrary to Seacor's claims, the Fifth Circuit's opinion clarifies its previous decisions in this area by specifying the contractual language that will trigger indemnity obligations for injuries caused by a platform

crane, thereby providing guidance to future contracting parties considering the language necessary to effect indemnity in these situations. Further, the Fifth Circuit appropriately found a causal connection necessary to give rise to indemnity under the contractual "arises out of" language.

The contractual language relied upon by the Fifth Circuit in finding that Seacor owed Chevron indemnity reads as follows:

> [Seacor] hereby agrees to fully indemnify . . . [Chevron] . . . of and from any and all liabilities, losses, damages, and costs . . . for personal injury and death- . . . arising out of or in any way directly or indirectly connected with the performance of service under this agreement or the ownership, maintenance, management, operation, transportation of passengers, carrying of cargo, *loading or unloading of cargo,* loading or unloading of passengers or navigation of the vessel . . . (Emphasis added).

Considering whether this language is sufficient to trigger indemnity obligations in favor of Chevron for the claims brought by Mr. Gaspard, the Fifth Circuit began its analysis by recognizing its previous decisions that held that "even broadly worded indemnification clauses that refer to claims 'directly or indirectly connected with the possession, management, navigation, and operation' of a vessel are insufficient to create a duty to indemnify for injuries caused by a platform crane during unloading." *Gaspard v. Offshore Crane and Equipment, Inc.*, 106 F.3d 1232, 1235 (5th Cir. 1997). The Fifth Circuit noted that in *Lanasse v. Travelers Insurance Company*, 450 F.2d 580 (5th

Cir. 1971), *cert. denied*, 406 U.S. 921, 92 S.Ct. 1779, 32 L.Ed.2d 120 (1972), it was confronted with remarkably similar facts and with a broadly worded indemnification clause. In that case, a crewmember aboard a utility tender was almost crushed to death when the operator of a Chevron platform crane allowed a welding machine to swing against the vessel's railing. The indemnity clause in *Lanasse* stated that indemnity would be provided to Chevron by the vessel owner for liability "arising in any way directly or indirectly connected with the possession, navigation, management and operation of the vessel." *Lanasse*, 450 F.2d at 582. The Fifth Circuit held that this broadly worded indemnity clause did not contemplate injuries caused by the negligent acts of a platform crane operator during unloading. The *Gaspard* court further recognized that in the Fifth Circuit's decisions following *Lanasse*, it held that broadly worded contractual indemnification language providing indemnity for any claim that "arises out of or is incident to performance" of a time charter agreement does not apply to liability for a platform crane operator's negligence during loading or unloading operations. *Gaspard*, 106 F.3d at 1235 (citing *Smith v. Tenneco Oil Company*, 803 F.2d 1386 (5th Cir. 1986) and *Hobbs v. Teledyne Movible Offshore, Inc.*, 632 F.2d 1238 (5th Cir. 1980)).

However, the Fifth Circuit correctly noted that in this case, the contractual indemnity language is distinguishable from the language considered by *Lanasse* and its progeny. Specifically, the Fifth Circuit was confronted with the issue of whether the inclusion of the words "loading or unloading" in Seacor's indemnification agreement made Seacor liable for Mr. Gaspard's injuries.

The district court had reasoned that the language in the indenmity agreement at issue was already broad enough to include activities such as unloading cargo, so that adding "loading or unloading cargo" did not add anything new to the broad introductory language. Using this logic, the district court held that if the broadest possible terms, such as the one at issue in *Lanasse*, do not apply to trigger indemnity under a time charter when injuries are due to a platform crane, then indemnity cannot be had under the Seacor-Chevron time charter, in spite of its explicit reference to unloading.

In reversing the district court, the Fifth Circuit correctly stated that "the inclusion of 'loading or unloading' worked a definite change in the scope of the indemnity arrangement" and distinguished the arrangement from those found in *Lanasse* and its progeny. *Gaspard*, 106 F.3d at 1235. To hold otherwise would always preclude indemnification for injuries caused by a platform crane just because the contract included indemnification for liability "arising out of or in any way directly or indirectly connected with the performance" of the contract, regardless of whether the contract explicitly states that negligence in unloading the vessel will trigger the indemnification clause. *Id.* This illogical result was never the intent of *Lanasse*. As stated by the Fifth Circuit, "the *Lanasse* court did not hold that more specific indemnification contracts must be construed to exclude damages caused by a platform crane during unloading. Nor did it hold that damages caused by a platform crane during unloading can never be subject to indemnification when the contract mimics the language in *Lanasse* by reciting that indemnification extends to any claim 'arising out of or in any way directly or indirectly connected with the performance of

service under this agreement.' It merely held that indemnity for injuries caused by platform cranes during unloading requires 'the plainly expressed intention of the parties, manifested by language couched in unmistakable terms.' " *Gaspard*, 106 F.3d at 1236. Finding that the inclusion of the language "loading or unloading" in the indemnification agreement plainly expressed the intention of the parties to provide indemnity for personal injuries received during unloading operations, the Fifth Circuit correctly held that Seacor owed indemnity to Chevron for Mr. Gaspard's claims.

Contrary to Seacor's assertions, then, the Fifth Circuit's holding in this case is not in conflict with its previous precedents. Rather, the decision clarifies these precedents and provides clear guidance on the language necessary to trigger indemnification for injuries caused by a platform crane. In fact, it was in response to *Lanasse* and its progeny that Chevron went out of its way to include "loading or unloading" in the indemnification agreement, and also went out of its way to state that Chevron's own negligence would not stand in the way of indemnification. The result is a contract that unambiguously states that if personal injuries occur during the unloading of the LONG ISLAND, which would necessarily involve the platform's crane, Seacor would owe indemnification to Chevron. In arguing that *Lanasse* should always nullify clear agreements to provide indemnity for injuries cause by a platform crane, Seacor misinterprets Fifth Circuit caselaw on this issue in an attempt to avoid its obligations contained in a contract it freely executed. As the Fifth Circuit correctly noted, "once a vessel owner explicitly agrees to indemnify a charterer

for liabilities that arise from negligent unloading operations, it can no longer hide behind the rationale in *Lanasse* and its progeny." *Gaspard,* 106 F.3d at 1236.

Further, Seacor is incorrect in arguing that the Fifth Circuit misapplied the "arises out of" language of the contract and failed to find a "causal operational relationship" necessary to trigger the indemnification clause, and instead "allowed the vessel's mere fortuitous engagement in a cargo offloading operation at the locale of the accident to trigger the obligation to indemnify." Seacor's Petition for Writ of Certiorari, page 10. As the Fifth Circuit noted, when Mr. Gaspard's accident occurred, the crane that allegedly failed was being used in unloading operations as it was unloading cargo from the LONG ISLAND. *Gaspard,* 106 F.3d at 1234. The charter agreement provided that Seacor would indemnify Chevron for "personal injury and death . . . arising out of or in any way directly or indirectly connected with . . . loading or unloading of cargo. . . . " Accordingly, the Fifth Circuit correctly found that a causal operational relationship existed because the injury arose out of or was directly or indirectly connected with Chevron's use of the crane during unloading operations. The operation that was underway (unloading cargo) necessarily involved the participation of the vessel, and because it was specifically provided for in the contract, the injuries that were caused or occurred during that operation satisfied the requisite "causal operational relationship" so as to trigger Seacor's indemnity obligations. Clearly then, the given liability is sufficiently related to the activities specified in the indemnity clause to have "arisen out of" those activities.

To argue otherwise is to ignore the facts of this case and the clear language of the indemnity agreement.

CONCLUSION

For the foregoing reasons, review by this Court is not necessary or appropriate and the writ for certiorari should not issue.

Respectfully submitted,

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